

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNY HILL,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 05-160E
)	
v.	)	JUDGE McLAUGHLIN
	)	MAGISTRATE JUDGE BAXTER
JOHN LAMANNA, et al.,)	
)	
Defendants.)	

MICHAEL HILL,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 03-323E
)	
v.	)	JUDGE McLAUGHLIN
	)	MAGISTRATE JUDGE BAXTER
JOHN LAMANNA, et al.,)	
)	
Defendants.)	

LESLIE KELLY,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 03-368E
)	
v.	)	JUDGE McLAUGHLIN
	)	MAGISTRATE JUDGE BAXTER
JOHN LAMANNA, et al.,)	
)	
Defendants.)	

KEVIN SIGGERS,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 03-355E
)	
v.	)	JUDGE McLAUGHLIN
	)	MAGISTRATE JUDGE BAXTER
JOHN LAMANNA, et al.,)	
)	
Defendants.)	

MYRON WARD,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 04-11E
)	
v.	)	JUDGE McLAUGHLIN
	)	MAGISTRATE JUDGE BAXTER
JOHN LAMANNA, et al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO COMPEL DISCOVERY

AND NOW, come Defendants, through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Michael C. Colville, Assistant U.S. Attorney for said district, and, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, respectfully move the Court to issue an Order compelling Plaintiffs to produce documents and records which are responsive to Defendants' First and Second Request for Production of Documents, and Defendants' First and Second Set of Interrogatories. In support of this Motion, Defendants aver as follows:

1. On August 24, 2006, the Court entered a Case Management Order directing that discovery in the above captioned matter close on December 1, 2006.

2. This Order was subsequently amended by the Court on or about November 14, 2006, and the discovery period was extended to February 2, 2007.

3. On October 3, 2006, Defendants forwarded their First Request for Production of Documents to Plaintiffs. (See, Defendants' First Request for Production of Documents attached hereto as Exhibit "A.")

4. On November 15, 2006, Defendants forwarded their First Set of Interrogatories and Second Request for Production of Documents to Plaintiffs. (See, Defendants' First Set of Interrogatories and Second Request for Production of Documents attached hereto as Exhibit "B" & "C.")

5. On November 30, 2006, Defendants forwarded their Second Set of Interrogatories to Plaintiffs. (See, Defendants' Second Set of Interrogatories attached hereto as Exhibit "D.")

6. To date Plaintiffs have failed to respond to any of the discovery requests. However, Plaintiffs did provide and forward Medical Authorizations to the Defendants in order for Defendants to obtain medical records from each of the Plaintiffs prior health care providers.

7. On various occasions since forwarding the various discovery requests, counsel for Defendants have reminded Plaintiffs' counsel that their discovery responses were overdue and that it was imperative that their responses be forthcoming, given the stringent deadlines that have been established by the Court.

8. On December 28, 2006, counsel for Defendants sent an e-mail to Plaintiffs' counsel informing them that if responses to the overdue discovery requests were not received on or before January 5, 2007, that a Motion to Compel would be filed with the Court. In this regard, a letter was also sent to Plaintiffs' counsel on December 29, 2006. (See, Letter dated December 29, 2006 attached hereto as Exhibit "E.")

9. To date, there has been no reply to the December 27, 2006 e-mail nor to the December 29, 2006 letter. Plaintiffs have failed to respond to the Defendants' discovery requests and discovery is outstanding.

10. The outstanding discovery is needed by Defendants' counsel in order to fully and accurately prepare and file their dispositive motion (Motion for Summary Judgment) which is due on or before February 2, 2007.

ACCORDINGLY, Defendants request that Plaintiffs be directed to fully respond to all of the outstanding discovery on or before January 17, 2007. Defendants further request that should Plaintiffs fail to respond to all of the outstanding discovery on or before January 17, 2007, that all of their claims be dismissed with prejudice, based upon their failure to prosecute.

Additionally, Defendants respectfully request that the Court extend the time within which Defendants may file their dispositive motion until February 12, 2007. Defendants suggest that Plaintiffs' deadline for filing their response to Defendants' dispositive motion remain unchanged.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Michael C. Colville
MICHAEL C. COLVILLE
Assistant U.S. Attorney
Western District of PA
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7337
PA ID No. 56668

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2007, a true and correct copy of the within Defendant's Motion to Compel Discovery has been served electronically and/or first-class mail, to and upon the following:

Richard A. Lanzillo, Esquire
Knox McLaughlin Gornall & Sennett, P.C.
120 West Tenth Street
Erie, PA 16501-1461

/s/ Michael C. Colville
MICHAEL C. COLVILLE
Assistant U.S. Attorney